

ORIGINAL

BEFORE THE  
FEDERAL COMMUNICATIONS COMMISSION  
WASHINGTON, D.C. 20554

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In the Matter of )  
)  
Amendment of Section 73.202(b) ) MM Docket No. 98-198  
Table of Allotments ) RM - 9304  
FM Broadcast Stations )  
(Cross Plains, Texas, et al.) )

To: Chief, Allocations Branch  
Policy and Rules Division  
Mass Media Bureau

RECEIVED  
APR 15 1999  
FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

**JOINT STATEMENT IN RESPONSE TO COMMISSION LETTER**

This Joint Statement is being filed by WBAP/KSCS Operating, Ltd. and Blue Bonnet Radio, Inc. ("WBAP/BBRI"), First Broadcasting Management, L.P. ("FBM"), and Hunt Broadcasting, Inc. ("Hunt"), by their counsel, in response to a letter request from the Chief, Allocations Branch to ALALATEX Broadcasting ("ALALATEX") dated March 31, 1999. The letter requests additional information from ALALATEX regarding the withdrawal of its petition in the above-captioned proceeding to come into compliance with Section 1.420(j) of the Commission's Rules.

In the ALALATEX withdrawal statement, which was served on undersigned counsel, ALALATEX stated that it had not received any payment for its dismissal, and that no agreements exist regarding that dismissal. Section 1.420(j) of the Commission's Rules requires that any party to an agreement which results in the withdrawal of a rule making proposal must submit an affidavit that no payment or other consideration in excess of expenses has been promised or paid. Since none of the parties represented by undersigned counsel in this proceeding have entered into an agreement, oral or written, with ALALATEX, for any payment or other consideration, no statements to that

effect had been submitted. Nevertheless, in response to the Commission's letter, affidavits of WBAP/ BBRI, FBM, and Hunt are attached to this Joint Statement stating that in each case, the parties comply in all respects with Section 1.420(j) of the Commission's Rules.

Undersigned counsel wishes to call to the Commission's attention the fact that the Commission's letter shows service only to undersigned counsel. In fact, six other law firms represent parties to this proceeding but apparently were not served by the Commission's letter. Each of those parties is being served with this Joint Statement.

The Commission's letter states that the Commission "received three separate counterproposals filed by the same law firm." As a matter of clarification, four other law firms participated in two of the three counterproposals.<sup>1</sup> The first Counterproposal (FBM) was filed on November 25, 1998, approximately one month prior to the comment deadline in this docket by Reddy, Begley & McCormick, on behalf of Gain-Air, Inc. and by Cohn & Marks, on behalf of KCYT-FM License Corp. as well as by the undersigned law firm on behalf of FBM. The second filing (WBAP/BBRI) was submitted only by the undersigned law firm. It is important to note that the second filing was required to be submitted in the same proceeding because there were four communities in common with the first (FBM) counterproposal. Thus, the WBAP/BBRI proposal could not have been filed as a separate petition because to do so would have made the proposal contingent on whether channel substitutions were indeed made at the four communities. See e.g., Wellington, Texas 13 FCC Rcd 4454 (1998); recons. 14 FCC Rcd 104 (1999). In order to avoid waiting an extended period for the first Counterproposal in MM Docket No. 98-198 to be granted

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1. In addition, two other law firms submitted proposals in this proceeding: Law Offices of Henry E. Crawford, on behalf of Wagonwheel Broadcasting of Santa Anna; and Law Offices of Robert J. Buenzle, on behalf of Gulf West Broadcasting Company and Sonoma Media Corp.

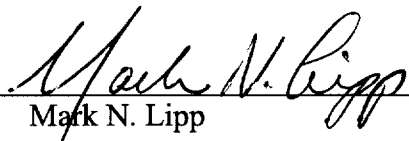
in order to file the WBAP/BBRI counterproposal, it was necessary to file both proposals in the same docket.

The third counterproposal was a joint effort by four law firms, (1) Cohn & Marks, on behalf of Heftel Broadcasting Corp., (2) Fletcher, Heald & Hildreth, on behalf of Metro Broadcasters-Texas, Inc., (3) Smithwick & Belendiuk, on behalf of Jerry Snyder and Associates, Inc. and (4) Shook, Hardy & Bacon on behalf of Hunt Broadcasting, Inc. Hunt is not the proponent in that proposal but merely one of several stations which has been asked to change its channel so that other stations can obtain improvements to their facilities. The reason this proposal was submitted jointly was to demonstrate that all parties to MM Docket No. 97-26 and 97-91 have reached a settlement that will enable the pending Applications for Review and Petition for Reconsideration to be dismissed as moot.

Undersigned counsel also wishes to point out that in each of the three counterproposals, Channel 290C3 was offered as an alternate channel in order to satisfy ALALATEX's interest in providing Cross Plains with a first local service.

Respectfully submitted,

WBAP/KSCS OPERATING, LTD. AND  
BLUE BONNET RADIO, INC.  
FIRST BROADCASTING MANAGEMENT, L.P.  
HUNT BROADCASTING INC.

By:   
Mark N. Lipp

Shook, Hardy & Bacon, L.L.P.  
600 14th Street, N.W.  
Washington, D.C. 20005-2004  
(202) 783-8400

Their Counsel



Federal Communications Commission  
Washington, D.C. 20554

March 31, 1999

ALALATEX Broadcasting  
c/o Jean Hill  
6101 Bayou Road  
Mobile, Alabama 36605

Dear Ms. Hill:

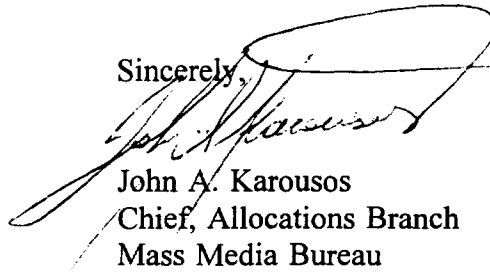
This refers to the petition for rule making filed by ALALATEX Broadcasting on June 19, 1998, proposing the allotment of Channel 245C3 to Cross Plains, Texas. As you are aware, on October 30, 1998, we released a Notice of Proposed Rule Making in MM Docket No. 98-198 setting forth your proposal. In response to the December 21, 1998, comment date in that proceeding, we received three separate counterproposals filed by the same law firm involving a total 44 communities. Thereafter, on February 16, 1999, you requested dismissal of your proposal. As discussed below, your request for dismissal does not comply with Section 1.420(j) of the Commission's Rules.

The Commission has adopted specific procedures to address its concern with any potential abuse of its administrative processes. See Amendment of Sections 1.420 and 73.3584 of the Commission's Rules Concerning Abuses of the Commission's Processes, 5 FCC Rcd 3911 (1990), recon. denied 6 FCC Rcd 3380 (1991). Section 1.420(j) sets forth specific requirements for a party withdrawing its expression of interest in an allotment rulemaking proceeding. In your withdrawal, you have merely stated that "ALALATEX has not received any payment for its dismissal." This statement does not comply with Section 1.420(j) because this section includes both the withdrawing party and its principals and consideration encompasses both money or other consideration that the withdrawing party or its principals have or will receive.

For this reason, we are requesting that you provide additional information complying with the requirements of Section 1.420(j) of the Rules. Specifically, we request a statement detailing any agreements, written or oral, express or implied, between ALALATEX or any of its principals or representatives and any of the counterproponents in this proceeding.

Further action in this matter will be withheld for a period of twenty days from the date of this letter.

Sincerely,

A handwritten signature in black ink, appearing to read "John A. Karousos", is written over the word "Sincerely," and the typed name below. The signature is fluid and cursive.

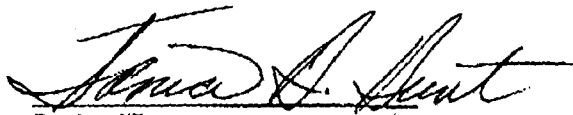
John A. Karousos  
Chief, Allocations Branch  
Mass Media Bureau

cc: Mark N. Lipp, Esq.

### AFFIDAVIT OF JANICE HUNT

I, Janice Hunt, President of Hunt Broadcasting, Inc. ("Hunt"), hereby state that there are no agreements, written or oral, express or implied, between Hunt or any of its principals, or to my knowledge anyone affiliated with Hunt, and ALALATEX Broadcasting. Neither Hunt nor any of its principals, nor to my knowledge anyone affiliated with Hunt, has paid or promised to pay any money or other consideration in exchange for the withdrawal of the ALALATEX petition.

I declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge, information, and belief.

  
Janice Hunt

Subscribed and sworn to before me, a notary public for the State of COLORADO  
county of JEFFERSON, this 14<sup>th</sup> day of April, 1999.



NOTARY PUBLIC  
My Commission Expires:

My Commission Expires 6/20/99

# AFFIDAVIT OF RONALD UNKEFER

I, Ronald Unkefer, Chairman & CEO of First Broadcasting Management, L.P. ("FBM"), hereby state that there are no agreements, written or oral, express or implied, between FBM or any of its principals, or to my knowledge anyone affiliated with FBM, and ALALATEX Broadcasting. Neither FBM nor any of its principals, nor to my knowledge anyone affiliated with FBM, has paid or promised any payment or other consideration in exchange for the dismissal of its petition.

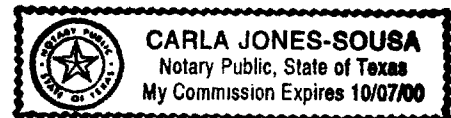
I declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge, information, and belief.

  
Ronald Unkefer

Subscribed and sworn to before me, a notary public for the State of Texas,  
county of Dallas, this 12 day of April, 1999.



NOTARY PUBLIC  
My Commission Expires:



## **CERTIFICATE OF SERVICE**

I, Lisa Balzer, a secretary in the law firm of Shook, Hardy & Bacon, do hereby certify that I have on this 15th day of April, 1999 caused to be mailed by first class mail, postage prepaid, copies of the foregoing **"Joint Statement in Response to Commission Letter"** to the following:

- \* Mr. John A. Karousos  
Chief, Allocations Branch  
Federal Communications Commission  
Mass Media Bureau  
445 12th Street, SW  
Room 3-A325  
Washington, DC 20554
- Henry E. Crawford, Esq.  
Law Offices of Henry E. Crawford  
1150 Connecticut Avenue, N.W.  
Suite 900  
Washington, D.C. 20036
- Matthew H. McCormick, Esq.  
Reddy Begley & McCormick  
2175 K Street, N.W.  
Suite 350  
Washington, D.C. 20037-1803
- Robert J. Buenzle, Esq.  
12110 Sunset Hills Road  
Suite 450  
Reston, VA 20190-3223
- Robert Healy, Esq.  
Smithwick & Belendiuk, P.C.  
1900 M Street, N.W.  
Suite 510  
Washington, D.C. 20036
- Roy R. Russo, Esq.  
Cohn & Marks  
1920 N Street, N.W.  
Suite 300  
Washington, D.C. 20036-1622
- Harry C. Martin, Esq.  
Fletcher Heald & Hildreth, P.L.C.  
1300 North 17th Street  
11th Floor  
Rosslyn, VA 22209-3801

\* HAND DELIVERED

  
Lisa M. Balzer



## AFFIDAVIT

I, Jack Russell, of Blue Bonnet Radio, Inc. ("BBRI") hereby state that there are no agreements, written or oral, express or implied, between BBRI or any of its principals, or to my knowledge anyone affiliated with BBRI, and ALALATEX Broadcasting. Neither BBRI nor any of its principals, nor to my knowledge anyone affiliated with BBRI, has paid or promised to pay any money or other compensation in exchange for the withdrawal of the ALALATEX petition.

I declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge and made in good faith.

*Jack Russell*

Subscribed and sworn to before me, a notary public for the State of Texas, County of Hunt, this 12 day of April, 1999.

*Catherine D. Ward*

NOTARY PUBLIC

My commission expires:

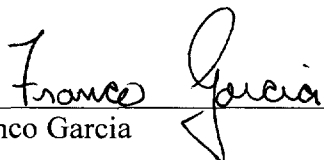
4-22-2002



## AFFIDAVIT

I, Franco Garcia, Assistant Secretary of WBAP/KSCS Radio, Inc., the General Partner of WBAP/KSCS Operating, Ltd., ("WBAP"), hereby state that there are no agreements, written or oral, express or implied, between WBAP or any of its principals, or to my knowledge anyone affiliated with WBAP, and ALALATEX Broadcasting with respect to the dismissal by ALALATEX of its petition to allot channel 245C3 to Cross Plains, Texas. Neither WBAP nor any of its principals, nor to my knowledge anyone affiliated with WBAP, has paid or promised to pay any money or other consideration in exchange for the withdrawal of the ALALATEX petition.

I declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge and made in good faith.

  
\_\_\_\_\_  
Franco Garcia

Subscribed and sworn to before me, a notary public for the State of New York,  
County of New York, this 13<sup>th</sup> day of April, 1999.

  
\_\_\_\_\_  
NOTARY PUBLIC  
My commission expires:

**NANCY J. SAYLES**  
Notary Public, State of New York  
No. 1SA4796780  
Qualified in Nassau County  
Certified in New York County  
Commission Expires February 28, 2000